

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

TIMELINE, INC.,

Plaintiff,

V.

PROCLARITY CORPORATION, et al.,

Defendants.

No. C05-1013JLR

ORDER

I. INTRODUCTION

This matter comes before the court on the parties' request for construction of several additional disputed claim terms in this patent infringement action.¹ This is the second round of claim construction in this case. The court previously construed ten disputed terms in an order dated June 29, 2006.

The court has reviewed the parties' briefing and supporting materials and has held a Markman hearing for this second round of claim construction. This order memorializes the court's construction of three disputed terms: (1) automatically; (2) accessing; and (3) providing a driver. Although the parties' briefing also addressed four "means-plus-function" claims, the court directed the parties at the

¹ The court recognizes that Plaintiff has not requested construction of two of the disputed terms.

1 Markman hearing to submit supplemental briefing regarding those claims. The court will therefore
2 address the means-plus-function claims in a separate order.

3 **II. BACKGROUND**

4 In its original complaint filed on June 3, 2005, Plaintiff Timeline, Inc. alleged infringement of
5 five of its patents by Defendant ProClarity Corporation. On September 28, 2006, the court granted an
6 unopposed motion by Timeline to amend its complaint to add claims against Microsoft Corporation.
7 The Timeline patents at issue in this case are patent numbers 5,802,511 (the “‘511 patent”), 6,023,694
8 (the “‘694 patent”), 6,026,392 (the “‘392 patent”), 6,625,617 (the “‘617 patent”), and 6,631,382 (the
9 “‘382 patent”).

10 The patents describe an invention that is designed to facilitate the retrieval and coordination of
11 information that is stored in various types of databases or other data sources. The ‘511 patent
12 describes the invention as “a computer-implemented system which is able to retrieve information
13 stored in one or more of a number of different sources and which may be in any of a number of
14 different formats and/or provide reports and analysis based on the information.” ‘511 patent, Col.
15 1:11-15. The ‘511 patent also describes the invention as “a system which achieves access to stored
16 information, e.g., for accessing information or for achieving coordination and/or combination of
17 information in two different information storage systems.” Id. Col. 2:66 - 3:2.

18 Timeline and ProClarity submitted a Joint Claim Chart to the court in February 2006 regarding
19 29 disputed claim terms. On June 29, 2006, the court issued a claim construction order that addressed
20 ten of those disputed claim terms.

21 **III. ANALYSIS**

22 The court set forth the legal standards for claim construction in its order dated June 29, 2006
23 and will not repeat that discussion here. See Dkt. No. 173 at 2-5. This order addresses the terms: (1)
24 automatically; (2) accessing; and (3) providing a driver.

1 As a preliminary matter, Timeline argues that the court should decline to construe the terms
 2 “accessing” and “providing a driver” because they were not among the terms included in the Joint
 3 Claim Chart submitted by Timeline and ProClarity in February 2006. The court understands
 4 Timeline’s reasons for opposing the addition of these two terms to the claim construction process.
 5 However, the parties dispute the meanings of these two terms and Defendants maintain that construing
 6 these terms will assist in the resolution of this matter. The court will therefore consider the parties’
 7 arguments regarding the construction of these two terms.

8 **A. Automatically**

9 The term “automatically” appears in all claims. Timeline argues that “automatically” should be
 10 construed to mean “without the need for human analysis,” a term that appears in a number of the same
 11 claims as “automatically.” In its prior claim construction order, the court construed the term “without
 12 the need for human analysis” to mean “not requiring evaluation or choice by a human.”² (Dkt. No.
 13 173 at 21).

14 Timeline argues that the patents expressly define “automatically” to mean “without the need
 15 for human analysis.” To support this argument, Timeline points to the following sentence from the
 16 ‘511 patent specification:

17 Preferably, some or all of the analysis involved is performed **automatically (i.e., without the**
need for human analysis), in one embodiment, using a properly programmed computer.
 18 ‘511 patent, Col. 3:3-5 (emphasis added).

19 Timeline’s argument that “automatically” and “without the need for human analysis” have
 20 identical meanings is not consistent with the Joint Claim Chart filed in February 2006, in which
 21 Timeline proposed somewhat different constructions of the two terms. As Timeline notes, a patentee
 22 may serve as his or her own lexicographer in defining claim terms. However, “[w]hen a patentee acts

24 ² The court also noted that “[s]imply because human evaluation or choice is not required
 25 would not mean that human evaluation or choice is never allowed.” Id.

1 as his own lexicographer in redefining the meaning of particular claim terms away from their ordinary
 2 meaning, he must clearly express that intent in the written description.” Merck & Co. v. Teva Pharmas.
 3 USA, Inc., 395 F.3d 1364, 1370 (Fed. Cir. 2005). “[T]he statement in the specification must have
 4 sufficient clarity to put one reasonably skilled in the art on notice that the inventor intended to redefine
 5 the claim term.” Id. Given that Timeline itself previously proposed somewhat different constructions
 6 of “automatically” and “without the need for human analysis” in the Joint Claim Chart, it would be
 7 difficult to conclude that the written description reflects a clear intent by the patentee to define
 8 “automatically” to mean “without the need for human analysis.”

9 The Federal Circuit has also indicated that “[t]he use of [two] terms in close proximity in the
 10 same claim gives rise to an inference that a different meaning should be assigned to each.” Bancorp
 11 Servs., L.L.C. v. Hartford Life Ins. Co., 359 F.3d 1367, 1373 (Fed. Cir. 2004); see also Primos, Inc.
 12 v. Hunter’s Specialties, Inc., 451 F.3d 841, 848 (Fed. Cir. 2006) (holding that “the terms ‘engaging’
 13 and ‘sealing’ are both expressly recited in the claim and therefore ‘engaging’ cannot mean the same
 14 thing as ‘sealing’; if it did, one of the terms would be superfluous.”). Here, the terms “automatically”
 15 and “without the need for human analysis” are sometimes used in close proximity in the same claims.
 16 For example, Claim 1 of the ‘511 patent reads, in part:

17 [U]sing said first driver to **automatically** obtain first information about the data structure of
 18 said first data source **without the need for human analysis** of the first data source by
automatically accessing content of information . . .

19 (emphasis added). There is no apparent reason why the patentee would use “automatically” and
 20 “without the need for human analysis” in such close proximity in the same claim if the patentee
 21 intended the two terms to have identical meanings.

22 Defendants’ proposed construction of “automatically” is “without user input or analysis.” The
 23 court finds this construction to be more consistent with the ordinary meaning of the term and the
 24 intrinsic evidence. As Defendants note, the claims use the term “automatically” in the context of
 25 automatically obtaining information and automatically accessing content of information. Construing

1 “automatically” to mean “without user input or analysis” is sensible in these contexts. Defendants also
 2 point to language in the ‘511 patent specification that contrasts actions that may be performed
 3 “automatically” to those that include user “input.” See ‘511 patent, Col. 12:10-16 and Col. 12:27-32.

4 Therefore, the court adopts Defendants’ proposed construction and finds that the term
 5 “automatically” means “without user input or analysis.”

6 **B. Accessing**

7 The term “accessing” was not one of the 29 terms listed in the Joint Claim Chart submitted by
 8 Timeline and ProClarity in February 2006.³ The term “accessing” is used in various contexts in the
 9 claims, such as “accessing” data, content of information, and a data source. See, e.g., ‘511 patent,
 10 claim 1; ‘617 patent, claim 4. As discussed above, Timeline argues that the court should decline to
 11 construe the term “accessing.” In the alternative, Timeline proposes that the term should be construed
 12 to mean: “Obtain access to. Accessing may include actions such as reading, obtaining, viewing, and/or
 13 saving.” Defendants propose that the term should simply be construed to mean “reading.”

14 Timeline does not dispute that the term “accessing” may include “reading.” However,
 15 Timeline maintains that “accessing” is “a term of art that has a broader meaning than simply ‘read’”
 16 and that Defendants’ proposed construction is too narrow. (Dkt. No. 226 at 19).

17 Timeline argues that Defendants themselves have suggested a broader meaning of “accessing”
 18 in other sections of their claim construction briefing. In particular, Timeline points to Defendants’
 19 discussion of a “programming means for accessing” at least two different data sources, where
 20 Defendants argue that the steps for “accessing” a data source include selecting directories, searching
 21 directories, loading general information, and loading data. (Dkt. No. 218 at 19). Timeline notes that

22
 23 ³ However, the term “accessing” already arose in the first round of claim construction, when
 24 the court construed the term “obtain . . . information about the data structure . . . [by] accessing
 25 content of information.” In its proposed construction of that term, ProClarity simply repeated the
 word “accessing,” without seeking to define it further.

1 “[n]owhere do defendants explain how ‘reading’ can be reconciled with the position that ‘accessing’
2 requires the functions select directories, search directories, load general information, or load data
3 definitions.” (Dkt. No. 226 at 21).

4 Timeline also observes that the specification of the ‘511 patent uses the word “obtain” as a
5 synonym for “access,” noting that the specification states that “[p]referably, the system is flexible in
6 that it is not inherently limited in the data formats it can access, but can be configured to obtain data
7 from virtually any computer-readable information source.” ‘511 patent, Col 3:6-9 (emphasis added).
8 While Defendants focus on the words “computer-readable” in this sentence to suggest that “access”
9 must mean “read,” Timeline is correct that this sentence uses “obtain” rather than “read” as a synonym
10 for “access.”

11 Defendants have also offered several contemporaneous definitions of the term “access” from
12 computer dictionaries. As Timeline notes, these dictionary definitions reflect a broader meaning of
13 “accessing” than simply “reading.” While Defendants have offered a declaration from an expert who
14 opines that “accessing” as used in the patents is limited to “reading,” the court does not regard this
15 extrinsic evidence as compelling.

16 In sum, the court agrees with Timeline that the term “accessing” as used in the claims has a
17 broader meaning than simply “reading” and that Defendants’ proposed construction is too narrow.
18 However, Timeline’s proposed construction is also not ideal. Timeline has proposed construing the
19 term to mean “Obtain access to. Accessing may include actions such as reading, obtaining, viewing,
20 and/or saving.” Timeline offers little if any explanation as to why “accessing” would include actions
21 such as “viewing” or “saving.”

22 Therefore, the court will adopt a modified version of Timeline’s proposed construction. The
23 court construes the term “accessing” to mean “obtaining access to.” The court regards this
24 construction as broad enough to include reading, without limiting the term to that particular action.
25

1 C. **Providing a Driver**

2 The term “providing a driver” or “providing a first driver” appears in a number of claims.
3 Timeline argues that if the court construes this term, it should be construed as “to supply or make
4 available a driver.” Defendants argue that the term should be construed as “identifying and initializing
5 a driver.”

6 The word “providing” is not a term of art and its ordinary meaning is not difficult to determine.
7 Defendants themselves refer to the following definition of the term from a standard dictionary:

8 **provide:** “1. archaic: to prepare or get ready in advance 2 a: to supply or make available
9 (something wanted or needed) b: to make something available to 3: to have as a
condition.” Webster’s Ninth New Collegiate Dictionary, 1987.

10 Timeline’s proposed definition matches one of the definitions in the dictionary cited by Defendants.

11 In support of their proposed construction, Defendants note that the ‘511 patent specification
12 states:

13 In the procedure depicted in FIG. 10, the first step after the procedure starts 1002 is to identify
14 and initialize the dynamic drivers 1004.

15 ‘511 patent, col. 11:39-41. The “1004” in this sentence refers to block number 1004 in Figure 10.

16 Defendants then point to claim 1 of the ‘511 patent, which discloses a method comprising of “a first
17 step for providing a first driver. . . . ” (as well as “a second step for using said first driver. . . . ”).

18 Defendants suggest that the “first step for providing a first driver” in claim 1 relates to the “first step
19 after the procedure starts” in block number 1004, which involves “identify[ing] and initializ[ing] the
20 dynamic drivers.”

21 In response, Timeline argues that Defendants’ own briefing suggests that block number 1004
22 (i.e., identifying and initializing the dynamic drivers) relates to “using” a driver, rather than “providing”
23 a driver. Timeline notes that in Defendants’ briefing on one of the means-plus-function claims,
24 Defendants assert that block number 1004 is part of the structure that performs the function of “using”
25 a driver. See Dkt. No. 218 at 14-16. Specifically, Defendants state that block 1004 involves

1 “activating drivers” and that block 1004 is one of “four steps relating to the function ‘using said driver
2 . . .’” Id. at 15.

3 The terms “providing” a driver and “using” a driver both appear in a number of the same
4 claims. As Timeline notes, Defendants contend in one section of their brief that “providing a driver”
5 means “identifying and initializing” a driver as shown in block number 1004, but argue later in their
6 brief that block number 1004 relates to “using” a driver. As Timeline suggests, Defendants’
7 arguments appear to be inconsistent.

8 Therefore, the court adopts Timeline’s proposed construction of “providing a driver,” which is
9 consistent with its ordinary meaning. The term “providing a driver” means “supplying or making
10 available a driver.”

11 IV. CONCLUSION

12 Following today’s ruling, the court must still address four disputed “means-plus-function”
13 claims in order to complete the claim construction process. The parties submitted supplemental
14 briefing on the means-plus-function claims on January 22, 2007. The court will address those claims
15 in a separate order and will advise the parties if it wishes to conduct another hearing on the means-
16 plus-function claims.

17 The clerk is directed to send copies of this order to all counsel of record.

18 Dated this 31st day of January, 2007.

19
20 s/James L. Robart
21 JAMES L. ROBART
22 United States District Judge
23
24
25